

Appendix A

MODEL NOTICE OF ELIGIBILITY TO RECEIVE A *DE MINIMIS* PARTY SETTLEMENT

[insert date]

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

[PRP Name]

[Address]

[City, State, Zip Code]

Re: Offer of *De Minimis* Settlement at the [Site Name] in [Site Location]

Dear [PRP Name]:

The United States Environmental Protection Agency (“EPA” or “the Agency”) is currently working to clean up the [site name] Site (“the Site”) located in [city, state] under the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), commonly known as the federal “Superfund” law. Superfund is a program administered by EPA that is designed to clean up hazardous substances that may pose a threat to human health or the environment.

The purpose of this letter is to: (1) provide [you or company name] with information related to the recent federal cleanup efforts at the [site name]; and (2) inform [you or company name] that [you or it] qualify for a special *de minimis* party settlement *[if offering specific de minimis amount in this letter insert dollar amount here]* at this Site to resolve potential liability that [you or company name] may have to EPA under CERCLA. *[If offering a de minimis settlement in this letter, include the following language: “Details on the terms of this offer and how to accept it are provided below. Please note that the deadline for accepting the offer is **[insert deadline date in bold]**”].* *[If a specific de minimis offer is not included in this letter, add either of the following: “EPA intends to provide [you or company name] with a de minimis settlement offer at a later time.” or “If you would like to enter into a de minimis settlement with EPA, please contact [insert name and number of regional contact person] before **[insert date in bold]**.”]*

Background

[If there has not been any prior communication with the PRP, include the following paragraph: “Under sections 106(a) and 107(a) of CERCLA, potentially responsible parties (“PRPs”) can be required to perform cleanup actions to protect the public health, welfare, or the

environment. PRPs may also be responsible for costs incurred by EPA in performing such cleanups. PRPs include current and former owners and operators of the Site and persons who arranged for treatment and/or disposal of any hazardous substances at the Site.”]

EPA has undertaken several response actions to investigate and clean up the [site name] under the authority of the Superfund program. A brief description of the response actions taken to date follows: *[insert a brief description of site activities, such as:*

- A preliminary assessment (PA) and site investigation (SI) in order to gain a basic understanding of any risks posed by releases or threatened releases from the site to human health and the environment.
- A removal action, conducted to reduce any immediate threat to the environment or human health.
- A Remedial Investigation (RI) to identify the Site characteristics and to define the nature and extent of soil, air, surface water, and groundwater contamination at the Site and the risks posed by the Site.
- Remedial Design and Remedial Action (RD/RA) to design and implement the EPA approved cleanup action for the Site.
- Activities to monitor, operate and maintain the cleanup action after the cleanup is completed.]

Eligibility for a *De Minimis* Settlement

Based on the information EPA has collected, the Agency believes that, although [you or company name] may have liability under CERCLA as [a/an] *[insert language identifying PRP class that letter recipient falls into: owner/operator, generator, or transporter (e.g., “arranging for the disposal of the hazardous substance TCE”)]* at [site name], [you or company name] are eligible for a special *de minimis* settlement with EPA.¹ Under CERCLA § 122(g), whenever practicable and in the public interest, EPA may offer special settlements to parties whose waste contribution to a site is minimal in volume and toxicity, that is, *de minimis* parties. *[For de minimis waste contributors, Regions may want to add language about why the PRP is potentially liable and why they are a de minimis party (e.g., “Shipping receipts for the Site show that you arranged for the shipment of only 2 barrels of TCE to the Site among the hundreds of barrels of TCE that were disposed of at the Site. Over the years, these barrels have deteriorated and leaked TCE into the ground, and eventually into the groundwater.”)]* *[For de minimis landowners, the letter should include the following language:* “In addition, an owner of the real

¹ EPA’s decision is based on information currently available and will be voided if [you or company name] have failed to disclose all information fully and accurately.

property on which the facility is located may qualify for a *de minimis* settlement if: (1) such owner did not conduct or permit the generation, transportation, storage, treatment, or disposal of any hazardous substances at the facility; and (2) the owner did not have actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment, or disposal of any hazardous substance.”]

An individual or business who resolves their Superfund liability as a *de minimis* party is not typically required to perform site cleanup. [For *de minimis* contributors, add the following: “Instead, EPA typically requires *de minimis* settlers to pay their fair share of cleanup costs incurred, plus a “premium” that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlers receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) contribution protection, which provides a settling party with protection from being sued by other responsible parties for the specific matters addressed in the settlement. Participation in a *de minimis* settlement means that you are settling directly with EPA.”] [For *de minimis* landowners, add the following: “Instead, EPA typically requires *de minimis* landowners to provide [insert language regarding provisions likely to be included in the settlement agreement, such as access, institutional controls, due care, cooperation and, if any, cash payment].”]

[For *de minimis* waste contributors, add the following paragraph: “EPA has designated parties contributing less than [insert pounds/gallons] of waste to the [site name] as *de minimis* waste contributors. EPA considers [you or company name] a *de minimis* party because EPA’s analysis indicates that the volume and nature of hazardous substances that you disposed of, or had disposed of, at the Site are below [insert pounds/gallons] and are, therefore, minimal compared to the other hazardous substances at the Site. Accordingly, based on currently available information, EPA believes that [you or company name] are eligible for a *de minimis* settlement.”]

[For *de minimis* landowners, add the following paragraph: “EPA has determined that [you have or company name has] demonstrated that [you or company name] satisfy all of the requirements for settlement as a *de minimis* landowner under CERCLA § 122(g). Accordingly, you are eligible to receive a *de minimis* landowner settlement.”]

Opportunity to Settle

[Add the next four paragraphs if a specific settlement amount is offered in this letter: “By this letter, EPA is offering [you or company name] a *de minimis* settlement at the [site name] for the amount of [\$_____]. If [you or company name] would like to participate in the settlement, please complete the signature page of the enclosed settlement and return the signed settlement agreement to [name and address of regional contact]. In addition, please be prepared to remit payment of [\$_____] to EPA as directed in the enclosed settlement agreement. We suggest that [you or company name] keep a copy of the entire settlement for your files. If we do not receive your signed copy by **[insert deadline date in bold]**, we will assume that [you or company name]

are not interested in settling at this time.”

Unless it has already been determined that the recipients of the letter have the ability to pay the settlement amount, add the following language: “EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If you believe and can document that [you or company name] fall within this category, please contact [insert name] at [insert phone number] for information on “Ability to Pay Settlements.” You will receive a package of information about such settlements and a form to fill out with information about your finances and will be asked to submit financial records including business [and personal] federal tax returns. If EPA concludes that [you have or company name has] a legitimate inability to pay the full amount, EPA may offer a schedule for payment over time or a reduction in the principal payment.”

“Please note that some or all of the costs associated with this offer may be covered by current or past insurance policies issued to [you or company name]. Most insurance policies will require that you timely notify your carrier(s) of a claim against you. To evaluate whether [you or company name] should notify your insurance carrier(s) of this demand, you may wish to review current and past policies, beginning with the date of your or your company’s first contact with the [insert Superfund site name], up to the present. Coverage depends on many factors, such as the language of the particular policy and state law.”

“Final approval of the settlement is subject to the review of authorized EPA [*unless site costs are less than \$500,000, include the following:* and United States Department of Justice (DOJ)] officials.² If you have any questions about the [site name], EPA’s *de minimis* determination, the terms of the settlement, or how to respond to this settlement offer, please contact [name and phone number of regional contact].”]

[*Add one of the following if a specific settlement amount is not offered in this letter:* “EPA intends to provide [you or company name] with a *de minimis* settlement offer at a later time. If you have any questions about the [site name], EPA’s *de minimis* determination, or anything else in this letter, please contact [insert name and number of regional contact].” or “If you would like to enter into a *de minimis* settlement with EPA, please contact [insert name and number of regional contact] before **[insert date in bold]**.”]

[*If recipient is likely a small business, insert:* “Finally, enclosed with this letter is a fact sheet about the Small Business Regulatory Enforcement Fairness Act (“SBREFA”), which

² After final EPA [and DOJ] approval, EPA will publish the settlement for public comment and, barring any unforeseen circumstances, will notify you of the effective date of the settlement shortly thereafter.

includes information that may be helpful to small businesses.”] Thank you for your prompt attention to this matter.

Sincerely,

Enclosure(s)